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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,849	12/30/2003	Richard Spink	P214397	9442

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EXAMINER

SALDANO, LISA M

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/749,849	SPINK, RICHARD	
	Examiner	Art Unit	
	Lisa M. Saldano	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/30/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 recites the limitation wherein "the canted upright fence post is arranged..." However, prior claim language from which this claim depends fails to explicitly disclose a *canted upright fence post*. There is insufficient antecedent basis for this limitation in the claim. Furthermore, it is not clear what the applicant intends to claim in the recitation "where the canted upright fence post is arranged adjacent to the end of the barrier section." Please clarify.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (3,638,430).

Regarding claim 1, Smith discloses a barrier system comprising first and second floatation members 12 containing buoyant material (see column 4, lines 55-65). A portion of the fin 11 between adjacent floats 12 comprises a coupling system wherein the floatation members may be placed in parallel side-by-side arrangement for storage (see Fig.10) or end-to-end arrangement to form a barrier line (see Fig.1).

Regarding claim 5, Smith illustrates substantially cylindrical floats 12. The portion of the fin 11 between adjacent floats 12 comprises a spacing portion where an effective length of the spacing portion is at least as long as a diameter of the float 12.

5. Claims 1, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Bell et al (5,000,616).

Regarding claim 1, Bell discloses a barrier system comprising first and second floatation members 12 containing buoyant material (see column 2, lines 50-55). The flexible sheet 30 between adjacent floats 12 comprises a coupling system wherein the floatation members may be placed in parallel side-by-side arrangement for storage (see Fig.4) or end-to-end arrangement to form a barrier line (see Figs.1&2).

Regarding claims 6 and 7, Bell et al disclose a coupler system comprising flexible sheet 30 as a spacing portion, first and second pin tubes created in float 12 by holes 24, and

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passageways created by the first and second pin tubes created in float 12 by holes 24. The coupler system resiliently opposes movement of first and second barrier sections (see Figs.1&2).

6. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark (4,738,563).

Regarding claim 1, Clark discloses a barrier system comprising first and second floatation members 7 containing buoyant material. The cable 10 between adjacent floats 7 comprises a coupling system wherein the floatation members may be placed in parallel side-by-side arrangement for storage or end-to-end arrangement to form a barrier line by virtue of the barrier systems flexibility formed by net 3, cable 10 and chains 9 (see Fig.1).

Regarding claim 2, Clark discloses a fence system formed by net 3 mounted on the first and second floatation members 7 to limit movement across the barrier line (see column 1, lines 14-30).

Regarding claims 3 and 4, Clark discloses chains 9 and ballast weights 5 that function as a stabilizing system adapted to maintain the floatation members 7 in a predetermined orientations when the barrier floats in the water (see Fig.2).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al as applied to claims 1 and 7 above, and further in view of Lundin (4,432,874).

Bell et al disclose the features as described above. Specifically, Bell et al disclose a coupler system comprising flexible sheet 30 as a spacing portion, first and second pin tubes created in float 12 by holes 24, and passageways created by the first and second pin tubes. The coupler system resiliently opposes movement of first and second barrier sections (see Figs.1&2). Furthermore, Bell et al disclose that the invention may be used as an oil containment boom (see abstract).

However, Bell et al fail to disclose that the coupler system may comprise a chain within a resilient material.

Lundin discloses a flexible collecting rope comprising floats 5, a chain 9 and a layer 14 of plastic or rubber material (see column 3, lines 1-15). Lundin discloses that the layer 14 protects the chain 9. The rope is for use in collecting of oil or other similar material from the surface of water (see column 1, lines 5-10). Optionally, Lundin illustrates a coupler system 12,13 used to connect portions of chain 9 to one another.

Regarding claim 9, please refer to Lundin's Fig.1. Portions of chain 9 on either side of a section of collecting rope function as cables extending through the floatation members 5 of those adjacent portions of collecting rope. The chain assembly within the middle portion of the

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illustrated invention in Fig.1 forms a continuous connection of other floatation members along the entire length of the barrier system.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the flexible sheet spacing portion/connecting device of Bell et al with the flexible collecting rope structure taught by Lundin because Lundin clearly illustrates that portions of the collecting rope are used to attach other floatation members to one another, the other floatation members being portions of collecting rope as well. Also, the inventions of Lundin and Bell et al are analogous art because they are both used to contain oil or a similar material on the surface of a body of water.

9. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark as applied to claim 1 above, and further in view of Lundin (4,432,874).

As described above, Clark discloses a barrier system comprising first and second floatation members 7 containing buoyant material. The cable 10 between adjacent floats 7 comprises a coupling system wherein the floatation members are flexibly connected to one another and may be placed in parallel side-by-side arrangement for storage or end-to-end arrangement to form a barrier line by virtue of the barrier systems flexibility formed by net 3, cable 10 and chains 9 (see Fig.1).

Regarding claim 10, Clark discloses that the fence posts 2 may assume an upright position or a canted or tilted position (see Fig.2). It is feasible that one of two different posts in the same fence may assume an upright position while the second of the different posts may

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assume a canted position, simultaneously. This depends of the water forces and currents of the water body hosting the marine fence. Netting 3 placed between the posts 2 completes the fence.

However, Clark fails to disclose that the coupler system may comprise a chain within a resilient material.

Lundin discloses a flexible collecting rope comprising floats 5, a chain 9 and a layer 14 of plastic or rubber material (see column 3, lines 1-15). Lundin discloses that the layer 14 protects the chain 9. The rope is for use in collecting of oil or other similar material from the surface of water (see column 1, lines 5-10). Optionally, Lundin illustrates a coupler system 12,13 used to connect portions of chain 9 to one another.

Regarding claim 9, please refer to Fig.1. Portions of chain 9 on either side of a section of collecting rope function as cables extending through the floatation members 5 of those adjacent portions of collecting rope. The chain assembly within the middle portion of the illustrated invention in Fig.1 forms a continuous connection of other floatation members along the entire length of the barrier system.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify cable portions of the invention of Clark with the flexible collecting rope structure taught by Lundin because Lundin clearly illustrates that portions of the collecting rope are used to attach other floatation members to one another, the other floatation members being portions of collecting rope as well. Also, the inventions of Lundin and Clark are analogous art because they are both used to contain elements within a predetermined area of a body of water.

Conclusion


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cerasari (3,800,542), Geist (4,033,137) and McAllister et al (4,422,797) disclose features that are pertinent to the present application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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